



WILLIAM T FUJIOKA
Chief Executive Officer

County of Los Angeles CHIEF EXECUTIVE OFFICE

Kenneth Hahn Hall of Administration
500 West Temple Street, Room 713, Los Angeles, California 90012
(213) 974-1101
<http://ceo.lacounty.gov>

July 30, 2010

To: Supervisor Gloria Molina, Chair
Supervisor Mark Ridley-Thomas
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: William T Fujioka
Chief Executive Officer

A handwritten signature in black ink, appearing to be "W. T. Fujioka", written over a horizontal line.

Board of Supervisors
GLORIA MOLINA
First District

MARK RIDLEY-THOMAS
Second District

ZEV YAROSLAVSKY
Third District

DON KNABE
Fourth District

MICHAEL D. ANTONOVICH
Fifth District

STATUS REPORT NO. 2 ON CONTRACTS WITH ARIZONA-BASED COMPANIES (ITEM S-1, AGENDA OF JUNE 1, 2010)

On June 1, 2010, your Board adopted a motion, as recommended by Supervisors Molina and Yaroslavsky, to oppose Arizona law Senate Bill (SB) 1070 related to enforcement of federal immigration laws. Included in this multi-part motion, your Board directed the following:

- Direct the Chief Executive Officer (CEO), in consultation with County Counsel, to review the terms of all existing contracts with Arizona-based or headquartered companies and report to the Board in two weeks on how and within what time frame these contracts may be legally terminated, without causing undue harm to the County's interests; and
- Direct County Counsel, the CEO, and the Internal Services Department (ISD) to report to the Board in two weeks with recommendations as to further Board action, including ordinance amendments, if any, deemed necessary to fully effectuate this resolution.

On June 17, 2010, we provided an initial status report to your Board regarding the work that was in progress to respond to these directives, with a follow-up status report to be provided to your Board within 45 days. This status report describes: (1) the current litigation status in U.S. District Court, and (2) the remaining action items pertaining to the motion that continue to be in process.

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Status of Current Litigation on SB 1070

On July 22, 2010, oral arguments were heard in United States District Court for the District of Arizona on the federal government's Motion for Preliminary Injunction (Motion) to enjoin Arizona from enforcing SB 1070 until the Court can make a final determination as to its constitutionality.

The federal government's principal argument focused on the fact that the power to regulate immigration is vested exclusively in the federal government, and that the provisions of SB 1070 are therefore pre-empted by federal law. The federal government further argued that if the Motion is not granted and SB 1070 is allowed to go into effect, it would cause the United States irreparable harm.

On July 28, 2010, the Court issued an order partially granting the Motion effectively keeping the most controversial provisions of SB 1070 from taking effect, including those that (i) called for police officers to check a person's immigration status while enforcing other laws, (ii) required immigrants to apply for and carry alien registration papers, (iii) created a crime for an unauthorized alien to solicit, apply for, or perform work, and (iv) authorized the warrantless arrest of a person where there is probable cause to believe the person has committed a public offense that makes the person removable from the United States.

County Counsel indicated that they had released a separate memo to your Board on July 28, 2010, which summarized the specific impact on the various provisions of SB 1070 (including those provisions that were not enjoined under the Order and which took effect on July 29, 2010).

Notwithstanding the foregoing, it is expected that Arizona will appeal the Order to the 9th U.S. Circuit Court of Appeals. Therefore, the ultimate breadth and duration of the Preliminary Injunction issued under the Order is uncertain, and County Counsel will continue to monitor the status of such litigation and report to your Board any further developments as they occur.

Departmental Review of Contracts with Arizona-based Businesses

On June 25, 2010, this Office issued instructions to departments to identify the exemption criteria and the process for departments to seek exemptions (Attachment). Departments were instructed to coordinate the review of the applicable contracts with their respective Deputy County Counsels, and to forward their justifications for exemption to their CEO budget analysts for review and approval of the exemption.

This Office is continuing to work with departments to finalize the following lists of Arizona-based businesses:

- Contracts to be considered for termination with prior written notice to contractor. Terminating such contracts would not appear to result in a significant negative operational or financial impact to the County. County Counsel continues to provide assistance to departments in their reviews of Arizona-based contractors.
- Contracts that have been identified as qualifying for an exemption from the Board's directive to terminate. This determination is based on the criteria identified in the June 25, 2010, memo, and on justifications provided by departments.

Additional Departmental Research on Arizona-based Businesses

As referenced in our June 17, 2010, status report, eCAPS payment data does not identify Arizona-based businesses that have remittance addresses outside of Arizona. Thus, to determine if there are additional Arizona-based businesses with County contracts that have not yet been identified, departments have been required to research their active contracts to identify Arizona-based vendors and to forward those contracts to County Counsel for review. Although departments were instructed to complete their review by July 15, 2010, based on the large volume of contracts in several County departments, this research and review remains ongoing.

Termination of Contracts with Arizona-based Businesses

County Counsel continues to review how best to proceed with the termination of contracts with businesses based or headquartered in Arizona, as well as the evaluation of bids received from Arizona-based businesses in response to open County contract solicitations, given the principles guiding contracting by public entities.

Your Board's June 1, 2010, motion indicated that the Board's "directive shall be lifted upon the suspension or repeal of SB 1070." Given the court's preliminary injunction to prevent Arizona from implementing major portions of SB 1070, this Office will hold in abeyance the termination process for Arizona-based contracts pending a legal resolution of this matter.

Recommendations for Further Board Action

We have been directed to report to your Board with recommendations as to further Board action, including ordinance amendments, if any, deemed necessary to fully effectuate the Board's motion regarding SB 1070.

Given the ongoing litigation, we believe that the adoption or amendment of a formal County ordinance is neither required nor necessarily appropriate, since the Board motion and its directives may be temporary in nature – that is, they will only remain in effect until the suspension or repeal of SB 1070, at which point they will terminate.

In light of this fact, it appears that your Board's adoption of the June 1, 2010, motion is the appropriate manner for the Board to express its opinions regarding Arizona's passage of SB 1070. The adoption of a formal County ordinance to effectuate the same is not recommended given the ongoing legal process.

Next Steps

We will report back to your Board on the following items within the next 30 days:

1. An updated status of current federal litigation related to SB 1070.
2. The implementation process for the possible cancellation of contracts with Arizona-based businesses, to be held in abeyance pending the resolution of federal litigation related to SB 1070.
3. The status of ongoing reviews of Arizona-based contractors, termination clauses, and the operational or financial impacts of canceling the contracts.

If you have any questions, or require further information on this matter, please contact Ellen Sandt, Deputy Chief Executive Officer at (213) 974-1186 or via email at esandt@ceo.lacounty.gov.

WTF:BC:ES
TT:GS:cg

Attachment

c: County Counsel
Executive Office, Board of Supervisors
Internal Services